

## UNITED STATES DISTRICT COURT

## SOUTHERN DISTRICT OF TEXAS

EDWIN C. SHAW,

Plaintiff,

versus

STAN NIX, *et al.*,

Defendants.

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CIVIL ACTION H-98-2927

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
ENTERED

## Opinion on Remand

DEC 21 1998

Michael N. Milby, Clerk

*Facts.*

On April 3, 1998, Edwin Shaw sued Stan and Cynthia Nix in a Harris County justice of the peace court for forcible entry and detainer. The complaint was served on the defendants ten days later, but because they failed to answer, the court entered a default judgment of eviction. Four days after the judgment, the Nixes filed an appeal bond, and on July 8, they filed for a trial *de novo* in the county court. On August 4, they answered. Nine days later, Shaw moved for summary judgment, which the court set for hearing on September 8. On September 3, the Nixes filed their notice of removal with this court, representing that they filed suit in the county court on August 8.

*Law.*

Because justice of the peace courts have exclusive, original jurisdiction over forcible entry and detainer cases, the case in the county court is necessarily a continuation of the original suit filed April 3 and served on April 13, 1998. TEX. PROP. CODE ANN. § 24.004 (West 1998); *but see Ezon v. Cornwall Equities Ltd.*, 540 F.Supp. 885 (S.D. Tex. 1982)(holding that the county-court appeal is an independent action). To remove, the Nixes needed to have filed a notice of removal by May 13.

Alternatively, viewed as an independent cause of action, the suit in the county court was filed on July 8, 1998, and because the defendants initiated it, they had notice

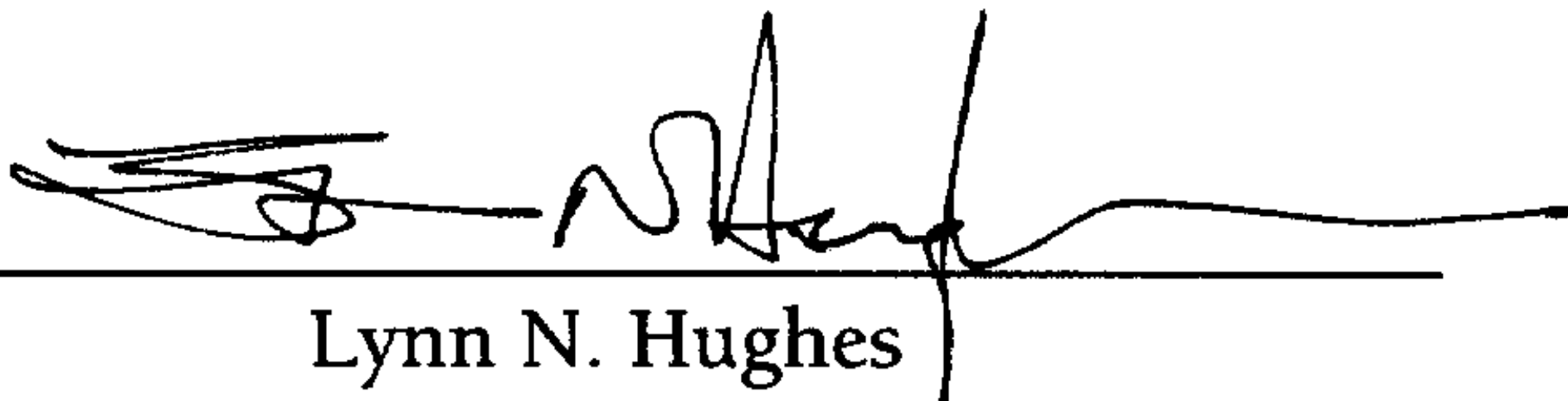
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of it instantaneously; therefore, it needed to be removed by August 7, 1998. Also, if it is considered an independent action, because the defendants initiated the county court proceeding, they may not remove it.

*Conclusion.*

This court will remand this case to the county court at law of Harris County, with all costs taxed to the Nixes.

Signed December 18, 1998, at Houston, Texas.

  
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Lynn N. Hughes  
United States District Judge